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LANSING

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ENROLLED BILL ANALYSIS

BILL NUMBER: Senate Bill 1085 (S-1)

TOPIC: Fair and Open Competition in Governmental Construction Contracts

SPONSOR: Senator John Moolenaar

CO-SPONSORS: Senators Rick Jones, David Hildenbrand, David Robertson, John Proos, Jack Brandenburg, Howard Walker, Arlan Meekhof, Phillip Pavlov, Darwin Booher, Goeffrey Hansen, Thomas Casperson, Roger Kahn, John Pappageorge, Patrick Colbeck, Michael Green, Mike Nofs, Mark Jansen, Judith Emmons, Joseph Hune, Bruce Caswell, Michael Kowall, Randy Richardville, Tonya Schuitmaker, and James Marleau

COMMITTEE(S): Senate Reforms, Restructuring and Reinventing
House Commerce

DATE INTRODUCED: April 19, 2012

DATE ENROLLED: June 12, 2012

DATE OF ANALYSIS: June 20, 2012

ADMINISTRATION POSITION

LARA is neutral on the bill as we do not regulate government construction contracts or project labor agreements.

PROBLEM/BACKGROUND

The bill was introduced in an effort to clarify the intent of Public Act 98 of 2011 which prohibits union only project labor agreements and allows all contractors, regardless of union or non-union affiliation, to have equal access to all public construction projects. A federal district court decision made earlier this year overturned Public Act 98 of 2011 indicating it interfered with the jurisdiction of the National Labor Relations Act. Michigan Attorney General Bill Schuette appealed this decision to the Sixth Circuit Court of Appeals.

DESCRIPTION OF BILL

The bill amends the Fair and Open Competition in Governmental Construction Act by adding a statement of legislative intent, in hopes of being agreeable to the courts, that indicates the bill provides for more "economical, nondiscriminatory, neutral, and efficient procurement of construction-related goods and services." Additionally, it adds language that would not prohibit a contractor from voluntarily entering into or complying with an agreement with a labor organization. The bill amends existing sections by:

- Prohibiting governmental units from including in contracts a requirement or prohibition of entering into or adhering to an agreement with labor organizations.
- Prohibiting governmental units from discriminating against a bidder, offeror, contractor, or subcontractor for becoming or remaining or refusing to become or remain a party to an agreement with a labor organization.
- Allowing a governmental unit to provide an exemption to these provisions under special circumstances to avert an imminent threat to public health or safety.

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SUMMARY OF ARGUMENTS

Pro Some argue this bill is necessary due to a recent federal court decision that indicated the intent and certain language in the recently passed Fair and Open Competition Act needs to be clarified. The bill will end discriminatory actions and treat all qualified companies equally, regardless of union or non-union affiliation.

Con Some argue this bill is another attack on unions because the non-union construction sector wants more opportunity to use cheap, unsafe, and sometimes illegal or misclassified labor to pad the pockets of the industry at the expense of workers and local communities

FISCAL/ECONOMIC IMPACT

The bill will have no fiscal or economic impact on State of Michigan facility projects since contracts and bidding documents already comply with the bill's requirement and do not in any way address union or non-union status.

The bill will have an indeterminate fiscal impact on local units of government, school districts, intermediate school districts, community colleges and public universities.

ANY OTHER PERTINENT INFORMATION

The following organizations testified or submitted cards in support of the bill:

National Federation of Independent Businesses
Michigan Building Trades Council
Associated Builders and Contractors
Detroit Regional Chamber of Commerce
Grand Rapids Area Chamber of Commerce
Small Business Association of Michigan
Lansing Chamber of Commerce
Michigan Business and Professional Associates

The following organizations testified or submitted cards in opposition of the bill:

International Brotherhood of Electrical Workers (IBEW)
Michigan Laborers
Michigan AFL-CIO
United Auto Workers
American Federation of State County and Municipal Employees
American Federation of Teachers – Michigan
Michigan Building Trades
National Electrical Contractors

ADMINISTRATIVE RULES IMPACT

No impact.